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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

Acacia Media Technologies Corporation,

Plaintiff,

v.

New Destiny Internet Group, et al.,

Defendant(s).

____/

And All Related and/or Consolidated Case Actions

____/

NO. C 05-01114 JW

ORDER OF APPOINTMENT

The Court is in receipt of Magistrate Judge Howard Lloyd's Report and Recommendation pursuant to the Court's June 21, 2005 Order Clarifying the Role of the Court's Technical Advisor, Mr. Rainer Schulz. (See Report and Recommendation that the Proposed Appointment of Rainer Schulz be Modified, Docket No. 91.) Accordingly, the Court appoints Mr. Rainer Schulz as a "Technical Advisor" and adopts and modifies the Magistrate's recommendation regarding Mr. Schulz's role as follows:

1. Any advice provides to the Court by Mr. Schulz will not be based on any extra-record information;

2. From time to time, the Court may request Mr. Schulz to provide a formal written report on technical advice concerning the case. A copy of the formal written report prepared by Mr. Schulz shall be provided to the parties. However, the Court reserves the right to have informal verbal communication with Mr. Schulz which are not included in any formal written report;

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2. Mr. Schulz may attend any court proceedings;

3. Mr. Schulz may review any pleadings, motions or documents submitted to the Court;

4. As a technical advisor, Mr. Schulz will make no written findings of fact and will not supply any evidence to the Court. Thus, Mr. Schulz will be outside the purview of "expert witnesses" under FED. R. EVID. 706. As such, the provisions in Rule 706 for depositions and questioning of expert witnesses will be inapplicable to Mr. Schulz;

5. Mr. Schulz will have no contact with any of the parties or their counsel;

6. The parties would pay the reasonable fees charged by Mr. Schulz for his service as a technical advisor to the Court. All matters pertaining to the fees of Mr. Schulz would be referred to Magistrate Judge Lloyd;

7. Mr. Schulz shall file a declaration that he will adhere to the terms of his appointment.

Dated: September 7, 2005

/s/ James Ware
JAMES WARE
United States District Judge

United States District Court

For the Northern District of California

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

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Dated: September 7, 2005

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Ronald L. Davis
Courtroom Deputy